

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioner,

v.

DANIEL N. JONES

Respondent

Case No.: I-02-72249

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 72249) served June 28, 2002, the Government charged Respondent Daniel N. Jones with a violation of 21 DCMR 708.10 for allegedly using plastic bags to store and dispose of solid waste other than yard waste.¹ The Notice of Infraction alleged that the violation occurred on June 27, 2002 at 218 F Street, N.E., and sought a fine of \$50.

On July 11, 2002, Respondent, through his sister, Ruth Jones, filed a timely plea and answer of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with

¹ 21 DCMR 708.10 provides:

Plastic bags intended for use as container liners are prohibited for use alone for storing solid waste refuse, except that plastic bags of at least nine (9) mil. thickness with a capacity of no more than thirty-two (32) gallons and securely tied may be used as containers for yard rubbish, provided that bags used for this purpose are marked as yard rubbish and set out for collection on the day(s) designated for yard rubbish collection.

a request for a reduction or suspension of any fines.² In a letter accompanying the plea, Ms. Jones explained that she had placed trash outside Respondent's property in violation of § 708.10, and therefore, felt it appropriate that she respond on his behalf.

Ms. Jones explained that approximately three years ago, the trash can for the subject property provided to Respondent by the D.C. government was stolen. At that time, Ms. Jones telephoned an unidentified person in the "trash removal office" of the D.C. government³ who advised her that, so long as her trash was well secured, no trash can was required. Ms. Jones stated that sometime later she called an unidentified person in the D.C. government and again requested a new trash can. Ms. Jones stated that the person advised her that new trash cans would be distributed at the beginning of the next year. Ms. Jones stated that she did not receive a trash can at the beginning of the year, and "continued to put out trash as instructed." Ms. Jones represented that now that she knows the requirements of § 708.10, she will "follow the rules in the future."

² By answering the Notice of Infraction on behalf of Respondent, and in light of the familial relationship and explanation proffered by her for the admitted violation, I conclude that Respondent's sister, Ruth Jones, has, without objection by Respondent, held herself out to have either the actual or apparent authority to bind Respondent in these proceedings. *Accord DOH v. Bloch & Guggenheimer, Inc.*, OAH No. I00-10439 at 1 n.1 (Final Order, April 18, 2001) (finding person who, without objection, acted as apparent agent for respondent could bind respondent for purposes of disposition); *see also DOH v. Valira Limited Partnership*, OAH No. I-00-20388 at 2 n.1 (Final Order, June 6, 2002); *DOH v. JV Trucking, Inc.*, OAH No. I-00-10445 at 2 n.2 (Final Order, March 2, 2001); *Insurance Management, Inc. v. Eno & Howard Plumbing Corp.*, 348 A.2d 310, 312 (D.C. 1975).

³ There is no designated "office of trash removal" within the District of Columbia government. With certain exceptions, the Department of Public Works, however, is chiefly responsible for the removal of non-commercially generated solid wastes in the District. *See generally* 21 DCMR 700.

By order dated July 22, 2002, I permitted the Government to respond to Respondent's plea and request. Based upon Respondent's explanation, the Government noted that a reduction of the fine would be "acceptable."

II. Findings of Fact

By his plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 708.10 on June 27, 2002 at 218 F Street, N.E.

1. By his plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 708.10 on June 27, 2002 at 218 F Street, N.E.

2. On June 27, 2002, Respondent used plastic bags to store and dispose of solid waste other than yard waste at 218 F Street, N.E.

3. Approximately three years ago, the trash can for Respondent's property that had been provided by the D.C. government was stolen. At that time, Respondent's sister, Ruth Jones, telephoned an unidentified person in the D.C. government, who advised her that so long as her trash was well secured, no trash can was required.

4. Sometime later, Ms. Jones telephoned an unidentified person in the D.C. government and again requested a new trash can. That person advised her that new trash cans would be distributed at the beginning of the next year. Respondent did not receive a new trash can at the beginning of the new year, and Ms. Jones continued disposing of her trash without a trash can.

5. Respondent has accepted responsibility for his unlawful conduct.

6. There is no evidence in the record of a history of noncompliance on the part of Respondent.

III. Conclusions of Law

1. Respondent violated 21 DCMR 708.10 on June 27, 2002. A fine of \$50 is authorized for a first violation of this regulation. 16 DCMR §§ 3201.1(d)(1) and 3216.4(e). *See* 48 D.C. Reg. 6656 (July 27, 2001).

2. Respondent has requested a reduction or suspension of the authorized fine. Under the facts of this case, a reduction, although not a suspension, of the fine is appropriate. Respondent's tacit estoppel defense that an unidentified person in the Government advised his sister that it was acceptable to put out her trash at Respondent's property in violation of the requirements of § 708.10 is unavailing as a matter of law. *DOH v. Staples, Inc.*, OAH No. I00-30117 at 2 n.1 (Final Order, June 29, 2001) holding that, as a matter of law, a party cannot assert estoppel against the Government in its sovereign capacity based merely on a claim that it relied on alleged representations made by its employees). Moreover, Respondent provides no explanation as to why, after three years, he could not have simply replaced, at his own expense, the stolen trash can that had been provided to him in the first instance by the District government as a public benefit. As this administrative court recently noted with respect to the requirements of § 708.10:

The purpose behind § 708.10 is evident. As part of the Rodent Control Act of 2000 initiative, the Mayor and the D.C. Council have determined that all of us who live or work in the District of Columbia must be more diligent in the management of our waste in order to effectively address the city's on-going rodent problem. Plastic trash bags, left on the ground and filled with the scent and promise of household garbage, provide an open invitation for rodents to "feed and breed." *DOH v. Washington Rehabilitation*, OAH No. I-00-20331 at 3-4 (Final Order, March 12, 2002). Compliance with the requirements of § 708.10 helps to avoid such a result.

DOH v. Washington, OAH No. I-00-20330 at 4 (Final Order, May 29, 2002) (footnote omitted).

3. In light of Respondent's acceptance of responsibility and the lack of a history of noncompliance, however, I will reduce the fine to \$30. *See* D.C. Official Code § 2-1801.02(a)(2); U.S.S.G. 3E1.1; 18 U.S.C. § 3553.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that Respondent shall pay a fine in the amount of **THIRTY DOLLARS (\$30)** in accordance with the attached instructions within 20 calendar days of the date of mailing of this Order (15 calendar days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

FILED **07/05/02**

Mark D. Poindexter
Administrative Judge